Editor's note: Appealed – reversed, Civ.No. 79-2456 (D.D.C. Jan. 22, 1981)

ELIZABETH PAGEDAS (ON RECONSIDERATION)

IBLA 78-481 Decided March 9, 1979

Petition for Reconsideration of the Board's decision styled Elizabeth Pagedas, 38 IBLA 130 (1978), concerning oil and gas offer W 63647.

Petition granted; decision of November 22, 1978, reaffirmed.

1. Regulations: Binding on the Secretary--Regulations: Force and Effect as Law

   The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

2. Oil and Gas Leases: Applications: Drawings

   A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured after the drawing is held.

3. Administrative Authority: Generally

   Reliance upon erroneous information given by BLM employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

APPEARANCES: William R. Hamm, Esq., Thomas W. Ehrmann, Esq., Robert H. Diaz, Jr., Esq., Quarles & Brady, Milwaukee, Wisconsin, for petitioner;
Clarence M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for Dorothy W. Schicktanz, intervenor.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Appellant Elizabeth Pagedas has filed a petition for reconsideration of our decision in Elizabeth Pagedas, 38 IBLA 130 (1978), which holds that an oil and gas lease drawing entry card is properly rejected where it contains the names of other parties in interest, and the separate statement of interest required to be filed is not signed by the offeror, as required by 43 CFR 3102.7.

In support of her petition, appellant alleges that the Wyoming State Office of the Bureau of Land Management (BLM), customarily issues leases based on multiple party offers, submitted without the separate statement required by the above regulation. It is contended therefore, that rejection of the offer in this instance would be arbitrary and unfair. Appellant also asserts that any defect in her offer should be allowed to be remedied on appeal. Finally appellant argues that reconsideration is proper because the Department is obliged to treat all oil and gas offerors equally and because appellant relied on governmental representation and longstanding agency procedures.

The decision in question contains a thorough consideration of the issue and the applicable law in support of the result. We affirm that result. We believe, however, that certain points raised in appellant's petition merit additional discussion.

[1] The Board cannot compound error by condoning what is alleged to be an erroneous administrative practice or a departure from a specific requirement of a regulation on the part of a State BLM office. D. E. Pack (On Reconsideration), 38 IBLA 23, 39-41 (1978); and cases therein cited. A regulation of the Secretary has the force and effect of law and must be complied with. Beehive Telephone Company, Inc., 38 IBLA 80 (1978); Wilfred Plomis, 34 IBLA 222 (1978); see United States v. New Orleans Public Service, 553 F.2d 459 (5th Cir. 1977).

[2, 3] Further, an oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR Subpart 3112, which is defective for failure to comply with a mandatory regulation may not be cured after the drawing is held. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). The rights of third parties are involved, and as stated above, the Secretary is bound by his own regulations. Churchill Corporation, 27 IBLA 234 (1976); see McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir., 1955). Nor can reliance on erroneous information, even if there were any, given by BLM employees confer on an applicant any right not authorized by law. Charles M. Brady, 33 IBLA 375 (1978); Belton E. Hall, 33 IBLA 349 (1978).

Appellant has cited the cases S. J. Hooper, 61 I.D. 346 (August 3, 1954) and S. J. Hooper (Supplemental Decision), 61 I.D. 350

(October 28, 1954) in support of her petition. In the Hooper cases, the Director of the Bureau of Land Management requested reconsideration of a determination that an oil and gas lessee's acquired land application was correctly rejected where the lessee failed to submit a statement of his other interest as required by a then governing regulation, 43 CFR 200.5 (1947). This regulation provided in pertinent part:

> In addition to the information required by the appropriate regulations, referred to in sec. 200.4, each application for a lease or permit must contain (1) a separate statement of the applicant's interests, direct and indirect, in leases or permits for similar mineral deposits, or in applications therefor, on federally owned acquired lands in the same State, identifying by serial number the records where such interests may be found * * *. [Footnote omitted.]

In his memorandum requesting reconsideration, the Director indicated that BLM had been processing applications and issuing leases without requiring the compliance of applicants with 43 CFR 200.5. The Bureau had not enforced the requirement because it considered the elimination of a similar requirement from another regulation (43 CFR 192.42, January 1951, governing public land lease offers) to be applicable to acquired land lease offers. The Director thought it unfair to penalize applicants and possibly lessees for failing to comply with a requirement which the Bureau had not enforced. Thus, in the supplemental decision, the applicant, and others similarly situated, were allowed to submit the statement of other interests as required by 43 CFR 200.5 without loss of priority.

Several crucial factors distinguish the situation in Hooper from the case at hand. First, in Hooper, the disregard of the regulatory requirement was a Bureau-wide policy. Second, reconsideration was initiated at the instance of the Director, BLM, as a matter of grace. In the case at hand, there is no indication that BLM, as a matter of policy has neglected to require compliance with 43 CFR 3102.7. The fact that appellant's application was rejected for failure to comply, whereas other applications may not have been rejected, demonstrates some confusion within the Wyoming BLM office. It is not indicative of national policy. There is no showing that other oil and gas offerors in appellant's position are not required to comply with the regulation by other BLM offices. Moreover, this case falls squarely within the ambit of the rule in Mildred A. Moss, 28 IBLA 364 (1977), aff'd, Moss v. Andrus, Civ. No. 78-1050 (10th Cir., filed September 20, 1978), discussed in extenso in our original decision of the case at bar.

We conclude that petitioner has not demonstrated that the decision of November 22, 1978, is in error. The petition for reconsideration is granted; the decision of November 22, 1978, 38 IBLA 130, is reaffirmed.

_____
Frederick Fishman
Administrative Judge

I concur:

_____
Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

On appeal, petitioner has submitted copies of correspondence and the affidavit of Fred Engle, the President of her leasing service, Resource Service, Company, Inc., that: (1) he submitted to Wyoming State Office the form attached by petitioner to her offer card, (2) he requested to be advised whether the form was acceptable and that the form be corrected if necessary, (3) a BLM Land Law Examiner advised him in writing that the form was "acceptable." The year in which the Examiner furnished the information is not in the record, but the request appears to be dated June 26, 1975, and the response is dated July 10.

While the above exchange might otherwise be sufficient upon which to predicate an estoppel under United States v. Wharton, 514 F.2d 406 (1975), the Department must consider the interests of those whose cards were drawn second and third, Dorothy W. Schicktanz and Stanley M. Edwards. In this case the Secretary and his employees are bound by the regulations, which establish how priority is fixed. See McKay v. Wahlenmaier, supra.

_____

Joseph W. Goss
Administrative Judge